

## AMENDMENTS TO RULE 33

RULE 33 is amended as follows:

### RULE 33. Interrogatories to Parties

(a) Availability~~[--Procedures for Use]~~. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. ~~[Interrogatories may, without leave of court, be served upon the plaintiff after filing of the complaint and upon any other party with or after service of the summons and complaint upon that party.]~~ **Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).**

~~[Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objections shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.]~~

#### **(b) Answers and Objections.**

**(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.**

**(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.**

**(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule**

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(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

~~[(b)]~~(c) ~~[Scope--Use at Trial]~~ **Scope: Use at Trial.**

Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a post-assignment conference or other later time.

~~[(c)]~~(d) Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; \_\_\_\_\_, 2000, eff. \_\_\_\_\_, 2000.)

#### ADVISORY COMMITTEE NOTE

Fed. R. Civ. P. 33(a) limits to 25 the number of interrogatories that

may be served without leave of court or stipulation. The CIT rule has no such limitation. The Committee is of the view that a limitation on the number of interrogatories may lead to additional discovery of other types, notably depositions, and thereby increase the cost of CIT litigation. In view of the CIT's national jurisdiction, travel and related costs for CIT depositions can be more costly than in district court proceedings, and the Committee recommends no limitation on interrogatories, as a means of potentially controlling the number and/or length of depositions. To the best of the Committee's information, the number of interrogatories has not been a source of abuse in CIT litigation. Should a party believe discovery by interrogatories is being abused, it may seek judicial intervention. This position is consistent with the views of the prior advisory committee on this issue. Also, while Fed. R. Civ. P. 33 limits the number to 25, Fed. R. Civ. P. 26(a)(1) provides for certain information as part of the "initial disclosures. The Committee has not recommended adoption of Fed. R. Civ. P. 26(a)(1).

Subdivision (a) of Fed. R. Civ. P. 33 also will not allow service of interrogatories (without leave of court or written stipulation) before the time specified in Rule 26(d) (i.e. before the parties meet and confer, which must occur at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(d)). As discussed under Rule 26(d)/(f), the Committee recommends tying the timing of interrogatories to the Rule 26(f) meeting rather than the service or filing of the complaint.

Subdivision (a) of current CIT Rule 33 consists of two paragraphs, whereas subdivision (a) of Fed. R. Civ. P. 33 consists of one paragraph. The substance of the second paragraph of the CIT rule appears as subdivision (b) of the Fed. R. Civ. P. The Committee recommends adopting the format of the Federal Rule. Paragraph (1) of the Fed. R. Civ. P. requires the party objecting to an interrogatory to state its reasons for objecting and "to answer to the extent the interrogatory is not objectionable." The CIT does not contain such provision, and the Committee recommends adopting the provision of the Fed. R. Civ. P.

Fed. R. Civ. P. 33(b)(3) requires responses to interrogatories to be served within 30 days after service. Current CIT R. 33(a) gives a party upon whom interrogatories have been served 30 days to answer, except that a defendant may answer up to 45 days after service of the summons and complaint upon that defendant. Under Fed. R. Civ. P. 26(d), the adoption of which the Committee recommends, the interrogatories could not be served before the parties meet and confer as required by subdivision (f) and establish a discovery plan. No prejudice to defendant is envisioned by removal of the 45-day rule.

Therefore, the Committee recommends adoption of the federal rule, which would tie the response to 30 days after the interrogatories are served, which would not occur until after the parties confer and establish a discovery schedule.

The Fed. R. Civ. P. also allows the parties to agree in writing to a shorter or longer time. The Committee is of the view that the CIT should adopt this part of the rule because it will reduce the expense of seeking an extension through motion.

Paragraph (4) requires grounds for objections to be stated with specificity; failure to do so amounts to a waiver of the objection. The CIT has no comparable provision. The Committee recommends adopting the federal rule.